

REMARKS

This amendment is responsive to the non-final Office Action mailed June 24, 2009. Claims 1-38 are pending in the application. The Office Action rejected Claims 1-38 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Gutterman et al. (U.S. Patent No. 5,297,031) in view of Lupien (U.S. Patent No. 6,012,046).

Applicant has carefully studied the cited art, the comments provided in the Office Action, and the pending claims, and respectfully submits that the claims are patentable over the cited art. Reconsideration of the application is requested in view of the following remarks.

Gutterman and Lupien Do Not Support a *Prima Facie* Section 103 Rejection of Claims 1-38

Claims 1-3

For convenience of examination, Claim 1 is repeated as follows:

1. A computer-implemented method of facilitating trading, comprising:
 - automatically, via a computer, sending a trial order to a computer-implemented market via a computer communications interface, wherein the trial order identifies an item to trade and indicates a non-zero quantity a and price for the item, and wherein the quantity indicated in the trial order is automatically set to zero when the trial order is paired with a contra-side order, and
 - automatically, via a computer, receiving a pairing report via a computer communications interface when the trial order is paired with a contra-side order,
 - wherein the trial order is paired for a zero quantity of the item, and
 - wherein the trial order provides discovery of current market depth for the item at the indicated quantity and price while resulting in a pairing for a zero quantity of the item.

For at least the reasons discussed below, Gutterman and Lupien do not teach or suggest the elements claimed in Claim 1. Therefore, the Office Action has not shown a *prima facie* basis for rejecting Claim 1 and its dependent claims, Claims 2 and 3.

Gutterman is directed to a method and apparatus for order management by market brokers. Orders are received and displayed for execution. The orders may be arranged and

displayed in an order deck, along with a total of the orders at market price. (See Gutterman, Abstract.) Gutterman describes handling order acceptances, fill reports, and cancel confirmations (Col. 6, lines 53-55). "Buy orders are represented in the deck pane as blue square shapes, and sell orders are represented as red circles, both of which include indications of the quantities of the orders represented." (Col. 12, lines 21-24.) Filling orders is further described at Col. 13, lines 27-46, which discusses communicating the filled order information to a clearinghouse.

As with the prior Office Action, the present Office Action cited Gutterman but fails to provide any particularity as to which elements of Gutterman are considered to disclose the elements recited in Claim 1. Applicant has again reviewed the entire disclosure of Gutterman, including the passages cited in the Office Action (namely, the Abstract; Col. 7, line 45, to Col. 8, line 32; and Col. 5, line 59, to Col. 6, line 67), and finds nothing that discloses or suggests "automatically . . . sending a trial order . . . , wherein the trial order identifies an item to trade and indicates a non-zero quantity and a price for the item, and wherein the quantity indicated in the trial order is automatically set to zero when the trial order is paired with a contra-side order," as claimed in Claim 1.

Gutterman also fails to teach or suggest "automatically . . . receiving a pairing report via a computer communications interface when the trial order is paired with a contra-side order, wherein the trial order is paired for a zero quantity of the item, and wherein the trial order provides discovery of current market depth for the item at the indicated quantity and price while resulting in a pairing for a zero quantity of the item."

All of the orders described in Gutterman are conventional orders to buy and sell that, when executed, result in a trade *for a non-zero quantity* of the item. None of Gutterman's orders are described as "trial orders . . . paired for a zero quantity of the item," as claimed.

Recognizing that Gutterman is deficient in at least one aspect ("Gutterman fail to explicitly teach while resulting in a pairing for a zero quantity of the item") (Office Action,

page 2), the Office Action further relied on Lupien to support the rejection of Claim 1. Nevertheless, the disclosure of Lupien does not overcome the deficiencies of Gutterman.

Lupien teaches a crossing network that matches buy and sell orders. The orders are entered in the form of a satisfaction density profile that represents a trader's degree of satisfaction to trade a particular instrument at various (price, quantity) combinations. Each element of the satisfaction density profile is considered a satisfaction density value. See, e.g., the Abstract. For every buy/sell profile pair, a central matching computer (CMC) calculates a mutual satisfaction cross product profile. Trades are matched in order, starting with the highest value of mutual satisfaction. See Col. 4, lines 34-48. The various price-quantity pairs of a profile may be viewed as forming a two-dimensional graph or surface.

According to Lupien, "each satisfaction density value is a number between zero and one, with zero representing no satisfaction (i.e., will under no circumstances trade that quantity at that price) and one representing total satisfaction." See Col. 4, lines 17-21. While Lupien teaches a correlation of "satisfaction density profiles" of respective traders to "maximize the mutual satisfaction of all traders" (see Abstract), Lupien does not disclose or suggest anything that relates to "pairing [of orders] for a zero quantity of the item," as claimed in Claim 1 of the present application. In all of Lupien, the orders that are matched according to the traders' respective satisfaction density profiles are orders for non-zero quantities of the items being traded.

In contrast, a trial order as claimed in Claim 1 of the present application initially has "a non-zero quantity and a price" but is configured to have its indicated quantity "automatically set to zero when the trial order is paired with a contra-side order." Accordingly, the trial order does not result in a trade between market participants for a non-zero quantity of the item. Instead, a pairing report for "a zero quantity of the item" is produced.

The disclosure of Lupien at Col. 4, lines 8-21, and Col. 5, lines 7-26, as cited in the Office Action, is simply not relevant to Claim 1 of the present application. Nothing in Lupien

even suggests a "trial order . . . resulting in a pairing for a zero quantity of the item," as claimed in Claim 1.

Whether considered alone or combined, the disclosures of Gutterman and Lupien fail to teach or suggest the elements recited in Claim 1, and therefore fail to support a *prima facie* obviousness rejection of Claim 1. The rejection of Claim 1 should be withdrawn.

Claims 2 and 3, which depend from Claim 1, are patentable for at least the same reasons as Claim 1 and for the additional subject matter they recite. In particular, applicant maintains that neither Gutterman nor Lupien teaches or suggests the following features:

- wherein the pairing report also indicates the price at which the trial order was paired with the contra-side order (Claim 2); and
- wherein the automatically sending and receiving are performed by a trading process (Claim 3).

For at least these reasons, Claims 2 and 3 should be allowed.

Claims 4-11 and 29-30

For convenience of examination, Claim 4 recites as follows:

4. A computer-implemented method of facilitating trading, comprising:
 - automatically, under control of instructions that are executed by one or more computing devices of a computer system:
 - receiving a trial order via a computer communications interface, wherein the trial order identifies an item to trade and indicates a non-zero quantity and a price for the item,
 - pairing the trial order with a contra-side order, wherein said pairing includes automatically adjusting the quantity indicated in the trial order to zero and producing a pairing of the trial order with the contra-side order for a zero quantity of the item, and
 - reporting, via a computer communications interface, the pairing of the trial order for the zero quantity of the item.

As noted above with respect to Claim 1, Gutterman discloses a method and system in which orders are received and displayed for execution. The orders disclosed by Gutterman result in trades for non-zero quantities of items.

In contrast, a "trial order" as recited in Claim 4 is paired "with a contra-side order, wherein said pairing includes automatically adjusting the quantity indicated in the trial order to zero and producing a pairing of the trial order with the contra-side order for a zero quantity of the item." At a minimum, the above elements are not taught by Gutterman.

Acknowledging that Gutterman is deficient,¹ the Office Action (page 4) further relied on Lupien at Col. 4, lines 8-21, and Col. 5, lines 7-26, to support the rejection of Claim 4. Applicant has considered the above-noted passages of Lupien, and indeed the entire disclosure of Lupien, and does not find any disclosure of a trial order as claimed.

Lupien's use of "satisfaction density profiles" to "maximize the mutual satisfaction of all traders" (see Abstract) does not suggest "pairing for a zero quantity of the item," as claimed in Claim 1 of the present application, nor is there anything in Gutterman or Lupien that is suggestive of trial order that, when paired, "includes automatically adjusting the quantity indicated in the trial order to zero," as claimed. In Lupien, orders that meet the respective satisfaction density profiles of the traders and are executed are orders that result in trading of non-zero quantities of the items at issue.

Whether considered alone or combined, Gutterman and Lupien fail to teach or suggest the elements of Claim 4. For at least these reasons, Claim 4 should be allowed.

Claims 5-11 and 29-30, which depend either directly or indirectly from Claim 4, are patentable for at least the same reasons as Claim 4 and for the additional subject matter they recite. In particular, applicant maintains that Gutterman and Lupien fail to teach or suggest the following features:

- selecting the trial order for pairing with the contra-side order without affecting the pairing priority of other orders in the order file (Claim 5);

¹ The Office Action (page 4) stated "Gutterman fail to explicitly teach would have been paired had it been a regular order." The relationship of this statement to Claim 4 is not clear as the statement is not commensurate with language recited in pending Claim 4.

- wherein reporting the pairing of the trial order includes sending a pairing report for the zero quantity of the item to a source of the trial order (Claim 6);
- wherein the pairing report includes the price at which the trial order was paired with the contra-side order (Claim 7);
- further comprising entering the trial order into an order file that contains orders to be paired with contra-side orders (Claim 29);
- wherein the order file is maintained by a market process that provides a market that enables market participants to trade items (Claim 30);
- automatically responding to a market inquiry based on orders in the order file other than the trial order (Claim 8);
- automatically removing the trial order from the order file after reporting the pairing of the trial order (Claim 9);
- wherein the automatically receiving, pairing, and reporting are performed by a market process that provides a market at which market participants trade items (Claim 10); and
- wherein the trial order is received from a trading process (Claim 11).

For at least these reasons, Claims 5-11 and 29-30 should be allowed.

Claims 12-22, 31, and 32

Claim 12 is repeated as follows:

12. A computer system configured to facilitate trading, comprising:

a first computing component configured to generate a trial order that identifies an item to trade and indicates a non-zero quantity and a price for the item, wherein the computing component further includes a communications interface configured to send the trial order to a market which enables market participants to trade items, and wherein the quantity indicated in the trial order is automatically set to zero when the trial order is paired with a contra-side order, and

a second computing component configured to receive a pairing report from the market via a communications interface,

wherein the trial order has been paired with a contra-side order for a zero quantity of the item, and

wherein the trial order provides discovery of current market depth for the item at the indicated quantity and price while resulting in a pairing for a zero quantity of the item.

Claim 15, in turn, recites:

15. A computer system configured to facilitate trading, comprising:

one or more computing components configured to receive a trial order and pair the trial order with a contra-side order, wherein the trial

order identifies an item to trade and indicates a non-zero quantity and a price for the item,

wherein upon pairing, the one or more computing components are configured to automatically set the quantity indicated in the trial order to zero and produce a pairing of the trial order with the contra-side order for a zero quantity of the item, and

wherein the one or more computing components are further configured to report the pairing of the trial order for the zero quantity of the item.

For at least the same reasons discussed above relative to Claims 1-3 and 4-11, Guttermann and Lupien neither teach nor suggest the computer systems claimed in Claims 12-22, 31, and 32. For instance, neither Guttermann nor Lupien teaches or suggests a trial order that "indicates a non-zero quantity" but upon pairing, "is automatically set . . . to zero . . . [to] produce a pairing of the trial order with the contra-side order for a zero quantity of the item."

For at least the reasons given above, Claims 12-22, 31, and 32 should be allowed.

Claims 23-28 and 33-34

Claim 23 recites as follows:

23. A tangible computer-accessible medium with structurally modified material storing computer-executable instructions, wherein the instructions facilitate trading at a market and, when accessed and executed, cause a computer to:

receive a trial order that identifies an item to trade and indicates a non-zero quantity and a price for the item,

pair the trial order with a contra-side order, wherein pairing the trial order includes automatically adjusting the quantity indicated in the trial order to zero and producing a pairing of the trial order with the contra-side order for a zero quantity of the item, and

report the pairing of the trial order for the zero quantity of the item.

Claim 23 and its dependent Claims 24-28, 33, and 34 are not taught or suggested by Guttermann and Lupien. The cited art nowhere teaches or suggests "a trial order that identifies an item to trade and indicates a non-zero quantity and a price for the item" and then "pair[s] the trial order with a contra-side order, wherein pairing the trial order includes *automatically adjusting the quantity indicated in the trial order to zero* and producing a *pairing of the trial order with the contra-side order for a zero quantity* of the item." (Emphasis added.) Therefore, for at least

reasons similar to those discussed above relative to Claims 4-9 and 29-30, Claims 23-28, 33, and 34 are allowable over the cited art.

Claims 35-38

Lastly, Claim 35 recites:

35. A computer system configured to facilitate trading, comprising:
means for receiving a trial order via a computer communications interface, wherein the trial order identifies an item to trade and indicates a non-zero quantity and a price for the item,
means for pairing the trial order with a contra-side order, wherein the means for pairing are configured to automatically adjust the quantity indicated in the trial order to zero and produce a pairing of the trial order with the contra-side order for a zero quantity of the item, and
means for reporting, via a computer communications interface, the pairing of the trial order for the zero quantity of the item.

The present application describes elements of a computer system that are configured to implement the functions recited in Claim 35. As with the other claims in this application, applicant has studied the disclosures of Guttermann and Lupien, and for at least reasons similar to those discussed above in regard to Claim 4, applicant submits that Guttermann and Lupien do not teach or suggest the subject matter recited in Claim 35. Therefore, the rejection of Claim 35 should be withdrawn.

Claims 36-38 depend from Claim 35, and thus are patentable for at least the same reasons as Claim 35. Applicant further submits that Claims 36-38 are patentable for the additional subject matter they recite, including:

- means for entering the trial order into an order file that contains orders to be paired with contra-side orders (Claim 36);
- means for selecting the trial order for pairing with the contra-side order without affecting the pairing priority of other orders in the order file (Claim 37); and
- wherein the means for reporting the pairing of the trial order includes means for sending a pairing report for the zero quantity of the item to a source of the trial order, wherein the pairing report includes the price at which the trial order was paired with the contra-side order (Claim 38).

Claims 35-38 are therefore patentable over the cited art and should be allowed.

CONCLUSION

The disclosures of Gutterman and Lupien do not support a *prima facie* rejection of Claims 1-38 under Section 103. Reconsideration of the application and allowance of the claims is therefore requested. Should any issues remain, the Examiner is invited to contact the undersigned counsel by telephone.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Kevan L. Morgan
Registration No. 42,015
Direct Dial No. 206.695.1712

KLM:jmb/nfs